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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,489	03/07/2001	Lianli Ji	055-01	4749

7590 11/19/2003

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/801,489

Applicant(s)

Ji

Examiner

Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 2, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-36, 38-53, and 55-79 is/are pending in the application.
- 4a) Of the above, claim(s) 41-53 and 55-57 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-36 and 38-40 is/are allowed.
- 6) ☒ Claim(s) 58-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Information Disclosure Statement

1. This Application has some history regarding information in the form of some actual prior art latches that Applicant wanted considered during Prosecution. Initially, those actual prior art latches were listed on an IDS; and for consideration during examination, Applicant provided photocopies of photographs of the latches. However, the quality of those images was such that full consideration was not reasonable; and so the IDS listing those items was lined through at appropriate places.

Since then, physical models of those prior art latches represented by the above-mentioned photocopies of photographs have been made available to the examiner during examination but they are not a permanent part of the Application file. However, a videotape showing those same latches, and a set of photographs of those same latches has been permanently made of record. Consequent to full consideration of the actual prior art latches, the videotape, the IDS listing the photographs has been signed and initialed. Further regarding the photographs, there are currently 14 photographs of the prior art latch models attached with the file.

The examiner has possession of the actual physical exhibits at this time and will be able to return them, as requested, to Applicant's representative at the close of Prosecution.

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Election/Restriction

2. As regards scope of the independent claims, the following limitations should be noted:
 - a. Claim 23 - a “pawl-retaining arm” specific to the embodiment of Group IIa only is required.
 - b. Claim 41 - a “button supported for slidable movement” specific to the embodiment of Group I only is required.
 - c. Claim 58 - a “pawl-retaining arm” specific to the embodiment of Group IIa only is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 59-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

While the embodiments of Groups I, IIa, and IIb may be enabled, it is not clear if the scope of the independent claims includes one or more of those embodiments since the disclosure does not use the terminology of “interlocking means”, “linking means”, “means connected with said housing for connecting”, “means of connection”, or “connecting means” in describing the

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structure of the embodiments. After reading the disclosure, it is not clear what is encompassed by the above 'means' limitations. See MPEP 2181-2185.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claims 59-79 are provisionally rejected under the judicially created doctrine of double patenting over claim 1 of copending Application No. 09/975,448. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and in view of the subject matter of the claims as allowed, would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter. Assuming the "linking means" and/or "interlocking means" are generic (see rejection made under 35 USC 112) and thereby implicitly describe the same structure claimed in the co-pending Application, double-patenting rejection is required.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Allowable Subject Matter

7. Claims 23-36 and 38-40 are allowed.

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Response to Arguments

8. Applicant's arguments filed September 2, 2003 have been fully considered but they are not persuasive.

Examiner notes that claims 41-53 and 55-57 do not depend from any generic claims and therefore will not be reinstated should a generic claim be found allowable.

As regards rejection under 35 USC 112 due to lack of antecedent basis in the written description for claim terminology whereby the scope of the claims cannot be determined with reasonable certainty. The terms "linking means", "interlocking means", and "connecting means", etc. are not used in the paragraph intended to correct problem. The rejection is not made for lack of antecedent basis for the terms 'link', 'interlock', etc., but because it is not clear from the disclosure what structure(s) should be covered by the relevant "means" limitations. See MPEP 2181-2185.

Inasmuch as entry of amendments after Final is not a right, and such amendments often require further consideration at least as to 'new matter' and in this case, whether or not the 112, second paragraph problems are corrected, it is suggested that should prosecution be Continued, the written description be amended to explicitly use or the 'means' terminology now appearing in the claims and to describe the parts of any/each embodiments that are covered by such limitation. For example: --The linking means consists of parts,....-- or --each embodiment includes linking means that includes,....-- or --In this embodiment, the linking means consists of,...., whereas in the (insert first, second, third) embodiment, the linking means consists of--, etc.. While this exact

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terminology is not required, it is required that after reading the specification, it is clear what structure is included by any 'means' limitations. In this case, it particularly applies as to whether or not the 'means' limitations are broad enough to include one or more embodiments.

As regards previous obviousness rejection, examiner notes a spring biasing the pendulum of the Tanimoto '923 reference. It is not clear from that disclosure if the spring is, or is not strong enough to resist gravity should the device be tilted. Accordingly, the reference does not *inherently* teach structure to read on present limitation. Modifying the spring to be so weak as to necessarily be capable of operating under the force of gravity as claimed is not suggested or motivated and there is reason to believe that such modification would affect the intended function of the device. Otherwise, the relevant Office Action should be reviewed as to the substance of the actual grounds of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Submission of any response by facsimile transmission is encouraged. Group 3677's relevant facsimile number is :

(703) 872-9306 - for all formal communications to be entered into the Application.

Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly within our examining group and will eliminate Post Office processing and delivery time and will bypass the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a Deposit Account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) ____ - ____) on _____
(Date)

Typed or printed name of person signing this certificate:

(Signature)

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If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is (703) 308 - 0494. The examiner can normally be reached on M - Th from 730 am to 600 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann, can be reached on (703) 306-4115.

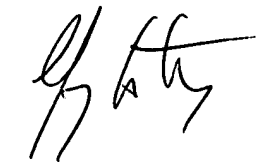
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

- Technology Center 3600 Customer Service is available at 703-308-1113.

- General Customer Service numbers are at 800-786-9199 or 703-308-9000.

GWE

November 17, 2003



GARY ESTREMSKY
PRIMARY EXAMINER